

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN EARL LEBO, JR., : CIVIL ACTION NO. 1:13-CV-1637  
: :  
Petitioner : (Judge Sylvia H. Rambo)  
: :  
v. : :  
COMMONWEALTH OF : :  
PENNSYLVANIA, : :  
: :  
Respondent : :

**ORDER**

AND NOW, this 1<sup>st</sup> day of May, 2019, upon consideration of the motion (Doc. 14) filed by *pro se* petitioner John Earl Lebo, Jr. (“Lebo”), seeking an order compelling the state court to resentence him in accordance with the court’s order in Lebo v. Wetzel, No. 1:13-CV-1637, Doc. 23 (M.D. Pa. June 7, 2016) (Rambo, J.), wherein the court granted Lebo’s petition for writ of habeas corpus in light of the United States Supreme Court’s decisions in Miller v. Alabama, 567 U.S. 460 (2012), and Montgomery v. Louisiana, 577 U.S. \_\_\_, 136 S. Ct. 718 (2016), and further upon consideration of the report (Doc. 17) of Magistrate Judge Martin C. Carlson, which recommends that we deny Lebo’s motion (Doc. 14) as moot and as premature and unexhausted, and it appearing that no party has objected to the report, see FED. R. CIV. P. 72(b)(2), and the court noting that the failure of a party to timely object to a magistrate judge’s conclusions “may result in forfeiture of *de novo* review at the district court level,” Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (citing Henderson v. Carlson, 812 F.2d 874, 878-79 (3d Cir. 1987)), but that, as a matter

of good practice, a district court should afford “reasoned consideration” to the uncontested portions of the report, E.E.O.C. v. City of Long Branch, 866 F.3d 93, 100 (3d Cir. 2017) (quoting Henderson, 812 F.2d 879), in order to “satisfy itself that there is no clear error on the face of the record,” FED. R. CIV. P. 72(b), advisory committee notes, and, following an independent review of the record, the court being in agreement with Judge Carlson’s recommendation, and concluding that there is no clear error on the face of the record, **IT IS HEREBY ORDERED** that:

- 1) The report (Doc. 30) of Magistrate Judge Carlson is **ADOPTED**
- 2) Petitioner’s motion to compel re-sentencing (Doc. 27) is **DENIED** without prejudice as either moot, premature, or unexhausted.
- 3) The court finds no basis to issue a certificate of appealability. See 28 U.S.C. § 2253(c); see also 28 U.S.C. § 2254 Rule 11(a).

s/Sylvia H. Rambo  
SYLVIA H. RAMBO  
United States District Judge